



01 AUG 2007

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ALBANY NY 12203

In re Application of LEVIN et al.	:
Application No.: 10/561,933	: DECISION ON
PCT No.: PCT/IL04/00561	:
Int. Filing: 23 June 2004	: PETITION
Priority Date: 23 June 2003	:
Attorney Docket No.:2488.032	: UNDER 37 CFR 1.47(a)
For: TRANSDERMAL DELIVERY SYSTEM:	:
FOR COSMETIC AGENTS	:

This is a decision on applicant's petition under 37 CFR 1.47(a), filed in the United States Patent and Trademark Office (USPTO) on 27 March 2007, to accept the application without the signature of joint inventor Sergey Rudaev.

### **BACKGROUND**

On 22 December 2005, applicant filed a transmittal letter (PTO-1390) requesting entry into the national stage in the United States of America under 35 U.S.C. § 371. Filed with the Transmittal Letter was, *inter alia*, the requisite basic national fee.

On 23 January 2007, a Notification of Missing Requirements (FORM PCT/DO/EO/905) was mailed to applicant indicating *inter alia*, that an oath or declaration in accordance with 37 CFR 1.497(a) and (b) and the surcharge for filing the oath or declaration after the thirty month period was required.

On 27 March 2007, applicant filed the instant petition along with a declaration, executed by the joint inventors on behalf of the nonsigning inventor. The petition under 37 CFR 1.47(a) in an attempt to satisfy the requirements of 35 U.S.C. 371(c)(4) requested the acceptance of the application without the signature of inventor Sergey Rudaev alleging that the non-signing inventor refused to sign.

### **DISCUSSION**

A petition under 37 CFR §1.47(a) must be accompanied by (1) the fee under 37 CFR §1.17(g), (2) factual proof that the non-signing joint inventor(s) refuses to execute

the application or cannot be reached after diligent effort, (3) a statement of the last known address of the non-signing inventor(s), and (4) an oath or declaration by each available joint inventor on his or her own behalf and on behalf of the non-signing joint inventor(s).

Petitioner satisfied Item (1) with the authorization to charge the \$200 petition fee to applicant's deposit account.

With respect to Item (2) above, Petitioner provided a sworn statement of first-hand knowledge from Galit Levin, co-inventor. Mr. Levin states that on 26 June 2006, he sent a letter to the non-signing inventor Sergey Rudaev, including a copy of the patent application, declaration and power of attorney and assignment. This correspondence was delivered to Mr. Rudaev on 28 June 2006 as indicated by the acknowledgement at the bottom of the letter.

Mr. Levin also communicated with Mr. Rudaev via telephone on 09 March 2006, when Mr. Rudaev stated that "he will not execute the formal documents for the application and that he will refuse to sign any documents relating to TransPharma Medical Ltd. patent applications". The nonsigning inventor has not responded to Mr. Levin's correspondence. The action taken by petitioner is sufficient to demonstrate that a *bona fide* attempt was made to present a copy of the application papers for U.S. application 10/561,933 (specification, including claims, drawings, and declaration) to the nonsigning inventor for their signatures and that Mr. Rudaev, by his conduct, refuses to sign the application papers. Item (2) is satisfied.

Item (3) is satisfied with the submission of last known address of the non-signing inventor.

Item (4) is satisfied with the submission of the declaration executed by the joint inventors on behalf of the nonsigning inventor. The requirements of 37 CFR 1.497 (a) and (b) have been met and the declaration is acceptable as filed. Accordingly, it is appropriate to accord the national stage application status under 37 CFR §1.47(a).

In sum, Petitioner has satisfied Items (1) - (4) above. For the reasons set forth above, the evidence submitted supports a finding that the nonsigning inventor refuses to sign the application at this time. Accordingly, it is appropriate to accord the national stage application status under 37 CFR §1.47(a) at this time.

### CONCLUSION

The petition under 37 CFR §1.47(a) is **GRANTED**.

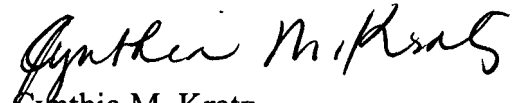
The U.S. Designated/Elected Office is authorized to accept the application as a 37 CFR 1.47(a) application using the declaration filed 27 March 2007. The application has an international filing date of 23 June 2004 under 35 U.S.C. 363, and a date of 27 March 2007 under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4).

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the non-signing inventors at their respective last known address of record.

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Also, a notice of the filing of this application will be published in the Official Gazette.

A handwritten signature in black ink, appearing to read "Cynthia M. Kratz". The signature is fluid and cursive, with the first name "Cynthia" being more prominent than the last name "Kratz".

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